

This invention seeks to provide an antenna that can be positioned so as to be relatively distant from a user's head due to problems which might otherwise be encountered with the head interfering with the transmission characteristics of the antenna. The simple solution to this problem would be to permanently position the antenna at an angle. However, when the phone is placed on a flat surface the phone rests in a rather unstable position on the antenna causing it to wobble and exposing the antenna to the risk of damage if a force is exerted on the telephone.

The phone disclosed in Rydbeck seeks to overcome a problem of positioning an antenna so that it is relatively distant from a users head, rather than the problem of the phone being in an unstable position on a flat surface, as in accordance with this invention. The phone disclosed in Rydbeck seeks to overcome his problem by utilizing an antenna which can be rotated between a canted and a non-canted position. If Rydbeck's phone is placed on a flat surface, a downward force on the phone could damage the antenna. In accordance with Applicant's invention where the antenna moves in a single plane, this would not occur since a downward force on the phone would merely pivot the antenna to its first position without damaging the antenna. Applicant's design also permits single handed operation whereas in Rydbeck it would be necessary to hold the phone in one hand while rotating the antenna between its respective positions with the other.

Nagai fails in anyway to correct the deficiencies of Rydbeck. Nagai deals with a retractable antenna whereas Rydbeck and Applicant's invention do not require such a retractable antenna nor would such an antenna be feasible in the radio telephone of Rydbeck. The Nagai approach is far more complex than Applicant's approach or Rydbeck's approach. Nagai utilizes a flip phone with an antenna module that can be pivoted separately from the cover of the flip phone. The Nagai telephone is not adapted for single handed operation.

It is not seen that one having the teachings of Rydbeck would be motivated to incorporate the more complex pivoting arrangement of Nagai.

Accordingly, it is not seen wherein Rydbeck, taken alone or in combination with Nagai would teach or suggest Applicant's invention. There is no motivation provided by Rydbeck to utilize a pivoting arrangement as in Nagai nor is there any motivation in Nagai to suggest that Nagai's pivoting arrangement would be useful with respect to the antenna of Rydbeck. Rydbeck uses a non-retractable antenna whereas Nagai's is retractable. Rydbeck uses a single body for the radio telephone whereas Nagai uses a clamshell arrangement. Therefore it is not apparent to one skilled in the art how one would store a pivoting retractable antenna of Nagai in the telephone arrangement of Rydbeck.


With respect to the dependent claims it is not seen wherein Rydbeck taken alone or in combination with Nagai would teach or suggest biasing the antenna toward a first stable position or a second stable position. Nor would they teach or suggest an antenna which is releasably locked in the first stable position or the second stable position.

Accordingly it is clear that the only basis for the proposed combination of references suggested by the Examiner is through the use of hindsight to defeat patentability. The federal circuit has held (*In re Rouffet*, 47 USPQ second 1453 (Fed. Cir. 1998)), that for an Examiner to be able combine references and reject the claims there must be some motivation to combine the references. For the reasons noted above no such motivation can be found for combining the teachings of Rydbeck and Nagai. This invention solves two significant problems, the first is, it provides a telephone which is capable of single handed operation. Secondly, it provides a means for moving the antenna away from the face of the user without risking damage to the

antenna, should the telephone be placed on a flat surface. In accordance with Applicant's invention the antenna would merely pivot to a non-damaging position. Rydbeck certainly doesn't suggest either single handed operation or avoidance of antenna damage through proper design of the antenna. Nagai fails to correct the deficiencies in Rydbeck since Nagai fails to teach one skilled in the art how to imploy a retractable antenna design in a single body telephone, nor would it be apparent from Nagai how to provide a telephone adapted for single handed operation.

For all the foregoing reasons, it is respectfully submitted that all of the claims are now present in the application are clearly novel and patentable over the prior art of record. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' Attorney at the telephone number indicated below.

Respectfully submitted

  
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2/28/00  
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